

Man Bites Dog: Court Vacates Arbitration Award Against Sexual Harasser

September 2, 2015 | [Employment Discrimination, Currents - Employment Law](#)



**William A.
Nolan**

Partner
Columbus
Managing Partner

It is the rare occasion when a court throws out an arbitration award. Typically the court's ability to do so is quite limited by statute and/or the collective bargaining agreement under which the arbitration award. But a New York appellate court recently vacated an arbitrator's award that put a bus driver (and union official) back to work even though he did not even show up to a hearing to contest sexual harassment charges against him. Recognizing its limited ability to vacate an arbitration award, the court found that the arbitrator's find conflicted with the public policy in federal, state and municipal anti-discrimination laws. The investigation into allegations by a dispatcher of sexually inappropriate and unwelcome comments ([the decision](#) gives few specifics or this post would probably have a more eye-catching title) concluded that the driver had engaged in harassment. The employer set a hearing for the matter to be heard and rescheduled it twice, but the driver never appeared because the union disputed the employer's power to discipline the driver for conduct that occurred while the driver was on union-paid release time (used to perform his union leadership duties). While the employer fired the driver, an arbitration ultimately agreed with the union's position that release time was a "safe haven" from discipline. (One has to wonder how far the union and arbitrator would take this principle!) We can rest assured that the union will spend its members' money to appeal this decision to defend this driver's "rights" to harass co-workers while on union release time. Certainly the employer, while undoubtedly incurring significant expense itself, cannot be accused in this situation of not taking appropriate steps to maintain an appropriate workplace environment. The case demonstrates that there are two sides to the harassment liability equation. It seems like the employer is doing this right; we will watch to see if this reaches a higher court and if the outcome changes.

RELATED PRACTICE AREAS

Arbitration and Grievances
EEO Compliance
Labor and Employment
Workplace Culture 2.0

RELATED TOPICS

arbitration
Harassment